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FM AMEMBASSY VIENNA
TO RUEHC/DEPT OF LABOR WASHDC
RUEAHL/HOMELAND SECURITY CENTER WASHINGTON DC
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UNCLAS VIENNA 001506

SIPDIS

DHS FOR ICE/OPLA AND ICE/OIA; DOJ FOR OSI AND OIA; STATE
FOR EUR/AGS

E.O. 12958: N/A

TAGS: [CPAS](#) [PREL](#) [AU](#)

SUBJECT: AUSTRIAN GOVERNMENT INFORMED OF KUMPF REMOVAL;
ACCEPTS APPLICABILITY OF 1988 JOINT STATEMENT

REF: 10-3-08 ST.ANDRE-YAP E-MAIL

¶1. (U) Summary. State and DHS/ICE representatives from Embassy met 10/7 with Austrian Foreign, Justice and Interior Ministry officials to request Austria accept the return of Josias Kumpf under the terms of the 1988 U.S.-Austria Joint Statement. The Austrians agreed on the applicability of the 1988 Statement and asked for 1) the text of the legal judgments that confirm that Kumpf obtained his 1956 by fraud/misstatement (see para 4) and 2) a letter from the Embassy confirming that the U.S. has provided the evidence required in para 4(b) of the Statement (see para 6 for draft text). The Austrians also had additional questions regarding Kumpf that they confirmed is not relevant to their decision on accepting his removal but that would be useful in assessing how to treat him should he return to Austria. See Action Requests in paras 4 and End Summary.

¶2. (U) Participants: Austria - MFA: Helmut Tichy, Deputy Legal Director; Gerhard Deiss, Director for Legal Cooperation; Gregor Csoersz. Interior: Christian Schmalzl, Deputy Director of Immigration Affairs. Justice: Stefan Benner, Office of International Affairs. U.S.: Dean Yap, Econ/Pol Counselor; Steven Madden, DHS/ICE.

¶3. (U) Econ/Pol Counselor briefly reviewed the denaturalization and renewal cases against Kumpf and asked for formal Austrian review of the case in keeping with the 1954 Readmissibility Declaration and the 1988 U.S.-Austrian Joint Statement. Pursuant to the 1988 Statement, the MFA's Tichy noted that the Austrians do not regard the 1954 Declaration as having legal effect, but that they agree that the 1988 Statement itself does apply. They also stated their understanding that Kumpf's lack of Austrian citizenship was not an issue, as the 1988 Statement clearly applies to any persons who emigrated from Austrian territory. Tichy then asked for the USG's "proof that (Kumpf's) immigration visa (was obtained) by fraudulent means or on the basis of false statements," as require din paragraph 4(b) of the Statement.

¶4. (U) Drawing from the material provided in ref e-mail, Econ/Pol Couns noted the findings of both the U.S. District Court ((U.S. vs. Kumpf, No. 3-C-944) and the Court of Appeals for the Seventh Circuit (U.S. vs. Kumpf, 438 F.3d 785, 787). Tichy asked that copies of the decisions be provided for GoA review. DOJ's Benner reported that in discussions with the U.S. in early 2007, the Amended Decision and Removal Order of the Immigration Judge (Jennie L. Giambastiani) had been provided to the Austrians, together with copies of various evidence submitted to the court did not address the question of immigration fraud. (Note: Embassy was unaware of the early 2007 contacts and has requested background information on the purpose and outcome of these discussion through Legatt

channels.)

¶5. (U) Tichy and Benner also asked for a letter from the Embassy that would confirm in writing the U.S. request that Austria accept Kumpf, the USG view that Kumpf obtained his visa by fraudulent means (and cover the court decisions confirming this), and confirm that the U.S. had provided, as required in para 4(b) of the Joint Statement, that the USG had transmitted to Austria "all evidence at (its) disposal which led ... to the conclusion" that Kumpf's visa had been obtained by fraud. Benner indicated that in addition to the court decisions, the material providing the 2007 discussions would be sufficient from the Austrian perspective to meet their own legal requirements. He reported that Austrian prosecutors would review Kumpf's case to determine whether legal action should be taken against him in Austria.

¶6. (C) Action Request: Clearance from the Departments of State, Homeland Security, and Justice is requested on the following text of a letter in response to the request in para 5 above:

Begin Text:

"Dear Dr. Tichy,

I wish with this letter to confirm my verbal request of October 7 that, pursuant to the procedures in the U.S.-Austrian Joint Statement of December 21, 1988, the Government of Austria agree to the return of Josias Kumpf to Austria, in keeping with the findings of the District Court and the Court of Appeals for the Seventh Circuit that Mr. Kumpf obtained his immigrant visa through fraud and false

statements and with the Order of Removal issued by the Immigration Court in Chicago, Illinois on January 8, 2007. The United States Government concurs with these decisions.

Enclosed with this letter you will find copies of the decisions by the U.S. District Court and the Court of Appeals, which detail the grounds for the courts' findings. I understand that the Government of Austria is already in possession of the text of the Immigration Court's decision.

With the transmittal of these decisions, and together with the Immigration Court decision and other materials provided to the Government of Austria in 2007, I also affirm that the U.S. authorities have now transmitted all evidence at our disposal which led to the conclusion that Mr. Kumpf obtained his immigration visa by fraudulent means or on the basis of false statements, as required in paragraph 4(b) of the Joint Statement of December 21, 1988.

Please do not hesitate to contact me should you have further questions, and I look forward to discussing this issue further, as necessary.

Sincere regards,

Dean Yap
Counselor of Embassy"

End Text.

¶7. Action Request - Additional Questions: In addition to the requests above, the Austrian officials asked several question relevant to the status and treatment of Kumpf in Austria, should he return. Econ/Pol Counselor affirmed, and the Austrians agreed, that the answers to these questions were of no relevance in the decision to accept the return of Kumpf. Rather, they were practical questions related to Kumpf's status and treatment in Austria. Embassy would appreciate any information Washington agencies can provide on these points:

-- Does Kumpf have any legal options that he could pursue to remain in the U.S. or to return to the U.S. after removal (for example, on the basis of family reunification or

hardship)?

-- Does Kumpf have any family or other personal ties to Austria?

-- What type of document would Kumpf travel on in returning to Austria?

-- What is the state of his health (physical and mental)?

-- What is his financial status and, specifically, would he have a source of income (such as a pension) to support himself in Austria?

GIRARD-DICARLO